IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE FARM BUREAU FEDERATION; WASHINGTON STATE GRANGE; NATIONAL FEDERATION OF INDEPENDENT BUSINESS; BUILDING INDUSTRY ASSOCIATION OF WASHINGTON; EVERGREEN FREEDOM FOUNDATION; WASHINGTON ASSOCIATION OF REALTORS®; and STEVE NEIGHBORS,	)	NO. 78637-2
Respondents,	)	EN BANC
v.	)	
CHRISTINE GREGOIRE, governor of the state of Washington; STATE EXPENDITURE LIMIT COMMITTEE, an agency of the state of Washington; and state of Washington,	)	Filed November 21, 2007
Petitioners.	)	

FAIRHURST, J. – The Washington State Farm Bureau Federation[1] (WSFB)

[1]This opinion refers collectively to all of the respondents, including the Washington State Farm Bureau Federation, the Washington State Grange, the National Federation of Independent Business, the Building Industry Association of Washington, the Evergreen Freedom Foundation, the Washington Association of Realtors®, and Steve Neighbors, as WSFB.

challenges certain taxes enacted by Engrossed Substitute House Bill (ESHB) 2314.[2] WSFB claims that these taxes raise revenues in excess of the fiscal year 2006 state expenditure limit and, therefore, pursuant to the Taxpayer Protection Act (TPA), are ineffective until approved by the voters. Chapter 43.135 RCW. WSFB further argues that Engrossed Substitute Senate Bill (ESSB) 6896,[3] section 7(6), which amended the TPA's process for calculating the state expenditure limit, was not effective in establishing the fiscal year 2006 expenditure limit at a level greater than the ESHB 2314 tax revenue increase. We disagree.

It is a fundamental principle of our system of government that the legislature has plenary power to enact laws, except as limited by our state and federal constitutions. Each duly elected legislature is fully vested with this plenary power.[4]

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[2]Laws of 2005, ch. 514.

[3]Laws of 2006, ch. 56, § 7(6).

[4]Justice Sanders has again expressed his view that this court has a long standing, but mistaken, understanding of the foundational principles of state government. *See* concurrence (Sanders, J.); *see also, e.g.*, *Island County v. State*, 135 Wn.2d 141, 955 P.2d 377 (1998) (Sanders, J., concurring); Richard B. Sanders & Barbara Mahoney, *Restoration of Limited State Constitutional Government: A Dissenter's View*, 59 N.Y.U. Ann. Surv. Am. L. 269 (2003). While we respect his viewpoint, we remain committed to the model of government consistently articulated by this court. *State ex rel. Citizens Against Tolls v. Murphy*, 151 Wn.2d 226, 248, 88 P.3d 375 (2004) ("[T]he legislature's power to enact a statute is unrestrained except where, either expressly or by fair inference, it is prohibited by the state and federal constitutions."); *accord State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 809, 982 P.2d 611 (1999); *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 180, 492 P.2d 1012 (1972); *State v. Fair*, 35 Wash. 127, 133, 76 P. 731 (1904).

Further, we respectfully disagree that this opinion implies that the general police power of the State renders specifically enumerated rights in article I nullities. We make no such holding.

No legislature can enact a statute that prevents a future legislature from exercising its law-making power.[5] That which a prior legislature has enacted, the current legislature can amend or repeal. Like all previous legislatures, it is limited only by the constitutions. To reason otherwise would elevate enactments of prior legislatures to constitutional status and reduce the current legislature to a second-class representative of the people.

What is true of statutes enacted by the legislature is likewise true of initiatives, for when the people pass an initiative, they exercise legislative power that is coextensive with that of the legislature. A law passed by initiative is no less a law than one enacted by the legislature. Nor is it more. A previously passed initiative can no more bind a current legislature than a previously enacted statute.[6]

The statutes that comprise the TPA, including those originating as initiatives, stand on the same footing with all other statutory enactments, equally subject to amendment by current and future legislatures. It is neither the prerogative nor the function of this court to substitute our judgment for that of the legislature or the

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[5]An exception to this rule, the binding nature of contractual obligations entered by the State through the authorized actions of previous legislatures, is not relevant here. *See Gruen v. State Tax Comm'n*, 35 Wn.2d 1, 54, 211 P.2d 651 (1949), *overruled on other grounds by State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 384 P.2d 833 (1963).

[6]The Washington Constitution does impose some limits on the legislature's ability to amend or repeal laws passed by initiative. Under article II, section 1(c), an initiative may not be amended or repealed by the legislature within a two year period following such enactment, except that it may be amended within that two year period by a two-thirds vote of the legislature.

people with respect to which laws are given effect. If a statute is constitutional, we will not invalidate it.

We are compelled by these principles to hold that section 7(6) of ESSB 6896, being a constitutionally valid enactment, is effective in establishing the fiscal year 2006 state expenditure limit. Because the ESHB 2314 taxes do not generate revenues in excess of the fiscal year 2006 expenditure limit as established, WSFB's challenge fails. Having resolved the matter, we decline to reach the other issues raised in this case, including the validity of other actions affecting the fiscal year 2006 expenditure limit, the constitutionality of the voter approval requirement of the TPA,[7] and WSFB's challenge to the legislative and executive privileges asserted by the State[8] during discovery.

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[7]Justice Chambers would "recognize[ ] . . . and confront the constitutional question." Concurrence (Chambers, J.) at 1. Chief Justice Alexander agrees. Concurrence (Alexander, C.J.). However, "[w]e adhere to the fundamental principle that if a case can be decided on nonconstitutional grounds, an appellate court should refrain from deciding constitutional issues." *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 752, 49 P.3d 867 (2002); *accord Tunstall v. Bergeson*, 141 Wn.2d 201, 210, 5 P.3d 691 (2000) (where issue may be resolved on statutory grounds, court will avoid deciding issue on constitutional grounds); *Tropiano v. City of Tacoma*, 105 Wn.2d 873, 877, 718 P.2d 801 (1986) ("This court will not decide an issue on constitutional grounds if the issue can be resolved on other grounds."); *Tommy P. v. Bd. of County Comm'rs*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982) (where case can be resolved on other grounds, court will not reach constitutional issue); *Senear v. Daily Journal-Am.*, 97 Wn.2d 148, 152, 641 P.2d 1180 (1982) (same); *Ohnstad v. City of Tacoma*, 64 Wn.2d 904, 907, 395 P.2d 97 (1964) (same).

[8]This opinion refers collectively to all of the petitioners, including Governor Christine Gregoire, the State Expenditure Limit Committee, and the state of Washington, as State.

I. FACTUAL AND PROCEDURAL HISTORY

A. *Background*

In 1993, Washington voters approved Initiative Measure 601. Laws of 1994, ch. 2. Initiative 601's stated intent included imposing a limit on the rate of growth in state expenditures and requiring voter approval of any tax increases that exceeded that limit. Former RCW 43.135.010(4)(a), (f) (1994). Initiative 601 was codified primarily at chapter 43.135 RCW, which the initiative named the TPA. RCW 43.135.902. The TPA has been revised, amended, and reenacted many times since its original approval by the voters.

The TPA limits spending from the state general fund during a fiscal year[9] to that fiscal year's expenditure limit and provides that taxes raising general fund revenues in excess of that expenditure limit must be approved by the voters.[10] Former RCW 43.135.025(1) (2005) provides that "[t]he state shall not expend from the general fund during any fiscal year state moneys in excess of the state

[9]A fiscal year begins on July 1 and ends the following June 30. RCW 43.88.020(12). Fiscal years take their names from the calendar years in which they end. For example, fiscal year 2006 is the fiscal year beginning July 1, 2005, and ending June 30, 2006.

[10]The state treasury is comprised of numerous accounts and funds established by law for various purposes. *See, e.g.*, RCW 43.84.092(4) (partial list of accounts in treasury). At all times relevant to this action, the state expenditure limit applied only to general fund spending. Effective July 1, 2007, applicability of the state expenditure limit extends to several "related funds" in addition to the general fund. Laws of 2005, ch. 72, § 4 (amending RCW 43.135.025 effective July 1, 2007).

expenditure limit established under [chapter 43.135 RCW]."[11] Former RCW 43.135.035(2)(a) (2005) further provides, in relevant part, that if legislative action raising state revenues "will result in expenditures in excess of the state expenditure limit, then the action . . . shall not take effect until approved by a vote of the people at a November general election."

The TPA establishes the state expenditure limit committee (ELC) to calculate state expenditure limits.[12] The ELC "determin[es] and adjust[s] the state expenditure limit as provided in this chapter."[13] Former RCW 43.135.025(5). The ELC meets every November to "adjust the expenditure limit for the preceding fiscal year based on actual expenditures and known changes in the fiscal growth factor and then project an expenditure limit for the next two fiscal years [the then current and the subsequent fiscal years]." Former RCW 43.135.025(6). The TPA also directs the ELC to adjust the expenditure limit based on other factors. By statute, the ELC must lower the expenditure limit if program costs or moneys are transferred

[11]Former RCW 43.135.035(3)(a) (2005) provides that "[t]he state expenditure limit may be exceeded upon declaration of an emergency," within certain delineated circumstances.

[12]The ELC was created, not by Initiative 601, but by the legislature through a later enactment. Laws of 2000, 2d Sp. Sess., ch. 2, § 1 (amending RCW 43.135.025).

[13]The ELC consists of "the director of financial management, the attorney general or the attorney general's designee, and the chairs of the senate committee on ways and means and the house of representatives committee on appropriations." Former RCW 43.135.025(5). Effective July 1, 2007, the ELC includes the ranking minority members of the two legislative committees. Laws of 2005, ch. 72, § 4 (amending former RCW 43.135.025). The attorney general's designee recused from the ELC during this litigation.

out of the general fund to another fund or account.[14] Former RCW 43.135.035(4). Correspondingly, the ELC must increase the expenditure limit if costs or moneys are transferred into the general fund from another fund or account.[15] Former RCW 43.135.035(5).

WSFB asserts that the TPA "sought to apply to the government the same age-tested financial advice given to our citizens--create a budget, stick to that budget, and save for a rainy day." Resp'ts' Opening Br. on Cross-Appeal and Resp. to State's Opening Br. at 6-7. However, close examination reveals that the home economics model is a poor fit for the complexities of the state budgeting process. The governor must submit a budget to the legislature no later than December 20 of the calendar year preceding the legislative session during which that budget will be considered. RCW 43.88.060. The legislature must adopt a budget "not later than thirty calendar days prior" to the start of the next fiscal year. RCW 43.88.080. But as the TPA defines the state expenditure limit, the budget target governing these efforts, it cannot be calculated until considerably *after* the start of the fiscal year to

[14]Former RCW 43.135.035(4) provides, in relevant part, that "[i]f the cost of any state program or function is shifted from the state general fund . . . to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the state expenditure limit committee . . . shall lower the state expenditure limit to reflect the shift."

[15]Former RCW 43.135.035(5) provides, in relevant part, that "[i]f the cost of any state program or function is shifted to the state general fund . . . from another source of funding, or if moneys are transferred to the state general fund from another fund or account, the state expenditure limit committee . . . shall increase the state expenditure limit to reflect the shift."

which the limit applies.

The TPA defines the state expenditure limit for a given fiscal year as "the previous fiscal year's state expenditure limit increased by a percentage rate that equals the fiscal growth factor."[16] Former RCW 43.135.025(3). But a fiscal year expenditure limit is subject to change over the course of the fiscal year and is not finally determinable for any fiscal year until after that fiscal year is closed. Recall that the ELC, acting pursuant to statutory directive, adjusts the expenditure limit to reflect transfers of program costs and moneys into and out of the general fund during the course of that fiscal year, up through its close on June 30. Former RCW 43.135.035(4), (5). The ELC cannot definitively complete this set of adjustments until after the June 30 close of the fiscal year.

Additionally, at its November meeting, the ELC adjusts the preceding fiscal year's expenditure limit to reflect the "actual expenditures" made during that fiscal year. Former RCW 43.135.025(6). The adjustment to reflect actual expenditures, referred to as "rebasing" the spending limit, imposes a "spend it or lose it" rule on

[16]The "'[f]iscal growth factor'" is currently defined as "the average of the sum of inflation and population change for each of the prior three fiscal years." Former RCW 43.135.025(7). Effective July 1, 2007, the fiscal growth factor is "the average growth in state personal income for the prior ten fiscal years." Laws of 2005, ch. 72, § 4(7) (amending RCW 43.135.025 effective July 1, 2007). The fiscal growth factor adjustment to the state expenditure limit is not material to the matters at issue here.

the legislature. If the legislature does not spend general fund moneys up to the fiscal year's expenditure limit, the limit is reduced by the unspent capacity for purposes of projecting the expenditure limits of future fiscal years. As with the adjustments reflecting transfers into and out of the general fund, the ELC cannot definitively identify actual expenditures made during a fiscal year until after the June 30 close of that fiscal year.

Notwithstanding the lag in availability of the previous fiscal year's state expenditure limit, the ELC is charged with producing expenditure limits for future fiscal years. Thus, each November the ELC calculates three expenditure limits: (1) a final adjusted expenditure limit for the fiscal year that concluded the previous June 30, plus projected limits, subject to future adjustment, for (2) the current fiscal year which began the previous July 1, and (3) the subsequent fiscal year which will begin the following July 1. Former RCW 43.135.025(6).

Applying this rubric to the circumstances presented in this case yields the following. The ELC, at its November 2004 meeting, adjusted the fiscal year 2004 expenditure limit to reflect actual expenditures, then used that adjusted limit to project expenditure limits for fiscal year 2005, then in progress, and fiscal year 2006, beginning July 1, 2005. During the 2005 legislative session, the legislature

enacted a budget for fiscal year 2006, including the ESHB 2314 taxes challenged by WSFB. At its November 2005 meeting, the ELC adjusted the fiscal year 2005 expenditure limit to reflect actual expenditures, then revised the projected expenditure limit for fiscal year 2006, then in progress, and projected an expenditure limit for fiscal year 2007, beginning July 1, 2006.

B. *The fiscal years 2005 and 2006 expenditure limits*

In its 2005 regular session, the legislature took action to raise the expenditure limits for fiscal years 2005 and 2006 by $250 million. Section 1701 of Engrossed Substitute Senate Bill (ESSB) 6090 "transfer[red]" $250 million[17] from the health services account *into* the state general fund "for fiscal year 2005," explicitly providing that "the state expenditure limit shall be increased by the amount of the transfer."[18] Laws of 2005, ch. 518, § 1701. As discussed above, former RCW 43.135.035(5) provides that a transfer of funds to the general fund from other funds or accounts during a fiscal year increases the state expenditure limit for that year.

Section 1607 of ESSB 6090 made an "appropriation"--an expenditure--of

[17]More precisely, ESSB 6090 section 1701 increased a preexisting transfer from the health services account of $46.25 million by $250 million, for a total transfer of $296.25 million. Laws of 2005, ch. 518, § 1701. As the original $46.25 million transfer is not at issue, and both parties refer to this transaction as the transfer of $250 million, this court will do likewise.

[18]"For transfers in this section to the state general fund, pursuant to [former] RCW 43.135.035(5), *the state expenditure limit shall be increased in the amount of the transfer.* The increase shall occur in the fiscal year in which the transfer occurs." Laws of 2005, ch. 518, § 1701 (emphasis added).

$250 million *from* the state general fund to the violence reduction and drug enforcement account (VRDEA), directing that the money was "solely for deposit." Laws of 2005, ch. 518, § 1607. As discussed above, former RCW 43.135.025(6) directs that the expenditure limit be adjusted "based on actual expenditures" before projecting the expenditure limits for subsequent fiscal years. Finally, ESSB 6090, section 1701 also "transfer[red]" $250 million from VRDEA to the health services account. Laws of 2005, ch. 518, § 1701.

In November 2005, pursuant to former RCW 43.135.025(6), the ELC finalized the state expenditure limit for fiscal year 2005 and projected limits for fiscal year 2006 (the then-current fiscal year) and fiscal year 2007. As directed by the TPA, the ELC increased the fiscal year 2005 expenditure limit by the $250 million transfer into the general fund. Laws of 2005, ch. 518, § 1701; *see also* former RCW 43.135.035(5) (increase limit for transfer into general fund). Also as directed by the TPA, the ELC rebased the fiscal year 2005 actual expenditures to reflect the $250 million appropriation from the general fund, thereby using the additional expenditure limit capacity created by the transfer into the general fund from the health services account. Laws of 2005, ch. 518, § 1607; *see also* former RCW 43.135.025(6) (rebase for actual expenditures). The ELC then projected the

fiscal year 2006 and 2007 expenditure limits from the rebased fiscal year 2005 expenditure limit, appropriately increased by the fiscal growth factor.

C. *Procedural History*

In July 2005, WSFB brought this action, seeking a declaration that ESHB 2314 raised revenues for expenditure in excess of the fiscal year 2006 expenditure limit and, therefore, was ineffective until approved by the voters under the terms of former RCW 43.135.035(2)(a).[19,20] The revenue generated by ESHB 2314 began to accrue in fiscal year 2006, making the expenditure limit for fiscal year 2006 the focus of this litigation. Laws of 2005, ch. 514, § 1302 (stating effective date as July 1, 2005). WSFB's claim relied on two assumptions: (1) that the state expenditure limit pertinent to reviewing ESHB 2314 was the projected limit for fiscal year 2006 calculated by the ELC in November 2004, and (2) that the legislature's actions in ESSB 6090, sections 1607 and 1701 did not operate to raise the fiscal year 2006 expenditure limit by $250 million. Both WSFB and the State moved for summary

[19]Initially, WSFB additionally challenged the validity of Engrossed Senate Bill (ESB) 6096, the estate tax, on the same basis. WSFB voluntarily dismissed this claim when it became clear that the funds generated by ESB 6096 were not subject to the requirements of the TPA because they were dedicated to the education legacy trust account, not the general fund. Laws of 2005, ch. 516.

[20]During discovery, WSFB sought disclosure of many internal government documents that the State claimed were protected by legislative or executive privilege. The trial court ruled that such privileges exist, subject to a list of qualifications. Because we resolve this case in favor of the State, it is unnecessary for us to address this privileges issue, and we decline to do so.

judgment.

Before the trial court made any ruling on the merits of this litigation, the legislature enacted ESSB 6896 during its 2006 regular session. Laws of 2006, ch. 56. Section 7(6) of ESSB 6896 (hereinafter the 2006 amendment) directly amended former RCW 43.135.025(6), providing in relevant part that "[i]n calculating the expenditure limit for fiscal year 2006, the calculation shall be the expenditure limit established by the state expenditure limit committee in November 2005 adjusted as provided by this chapter and adjusted to include [certain specified appropriations]." The governor signed ESSB 6896 into law on March 15, 2006, two days before the summary judgment hearing. Laws of 2006, ch. 56. The 2006 amendment took effect immediately. *Id.* § 13.

Following the March 17, 2006 hearing, the trial court decided the case, granting summary judgment partially in favor of each side. As amended on reconsideration, the court granted summary judgment "with regard to the application of the voter approval requirement of RCW 43.135.035(2)(a)" in favor of WSFB on Parts I and II of ESHB 2314, and in favor of the State on "all other parts and sections of ESHB 2314." Def.'s Clerk's Papers at 10-11.

The State sought direct review. WSFB appealed to the Court of Appeals.

We consolidated the appeals and granted direct review. The trial court's order was stayed pending resolution of this appeal.

The State challenges the trial court's determination that Parts I and II of ESHB 2314 are invalid absent voter approval under former RCW 43.135.035(2)(a).[21] WSFB challenges the trial court's determination that Part XI of ESHB 2314 did not trigger the voter approval requirement of former RCW 43.135.035(2)(a). WSFB also challenges the denial of its motion to compel discovery of documents regarding which the State claimed legislative and executive privilege.

II. ISSUE

Does the 2006 amendment, in which the legislature expressly adopted the fiscal year 2006 expenditure limit calculated by the ELC at its November 2005 meeting, establish the state expenditure limit for fiscal year 2006?[22]

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[21]In support of its challenge, the State asserts (1) that the 2006 amendment establishes the fiscal year 2006 expenditure limit, includes in it the disputed $250 million amount, and thereby resolves the case in the State's favor; (2) that ESB 6090 increased the state expenditure limit for fiscal year 2006 by $250 million; (3) that the ELC's November 2005 determination of the fiscal year 2006 expenditure limit must be given effect; and (4) that former RCW 43.135.035(2)(a), by requiring voter approval of future tax increases, violates article II, section 1(b) of the Washington Constitution.

[22]Based on our analysis we need not, and therefore decline to, reach the other issues raised in this case, including (1) the validity of other legislative actions affecting the fiscal year 2006 expenditure limit, as well as the ELC's actions at its November 2005 meeting; (2) the constitutionality of former RCW 43.135.035(2)(a)'s voter approval requirement; and (3) the legislative and executive privileges issue.

III. ANALYSIS

A. *Standard of review*

WSFB claims that taxes enacted in Parts I and II of ESHB 2314 increase general fund revenues in excess of the expenditure limit for fiscal year 2006. WSFB claims, therefore, that these taxes are ineffective without prior voter approval under former RCW 43.135.035(2)(a) of the TPA, which provides that taxes raising general fund revenues "in excess of the state expenditure limit . . . shall not take effect until approved by a vote of the people." The State argues that the 2006 amendment raised the fiscal year 2006 expenditure limit by $250 million, thus increasing that limit beyond the additional revenues raised by ESHB 2314 and defeating WSFB's claim. Precise figures for the revenues generated by ESHB 2314 and the fiscal year 2006 expenditure limit are not critical to this case. It is undisputed that if the fiscal year 2006 expenditure limit was increased by $250 million, WSFB's claim that ESHB 2314 raised revenues in excess of that limit fails.

The trial court decided this case on summary judgment. We review rulings on summary judgment de novo. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005). Only legal questions are before the court. We review questions of law de novo. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10,

43 P.3d 4 (2002).

B. *The 2006 amendment is a valid legislative enactment*

"Our primary duty in interpreting any statute is to discern and implement the intent of the legislature." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). The legislature's intent in enacting the 2006 amendment is clear. The 2006 amendment revised former RCW 43.135.025(6), the provision that indicates how the state expenditure limit is calculated. The 2006 amendment's language provides, "[i]n calculating the expenditure limit for fiscal year 2006, the *calculation shall be the expenditure limit established by the state expenditure limit committee in November 2005* adjusted as provided by this chapter and adjusted to include [certain specified appropriations]." Former RCW 43.135.025(6) (emphasis added). This language expressly adopts as the expenditure limit for fiscal year 2006 the amount calculated by the ELC at its November 2005 meeting, subject to adjustment as provided in chapter 43.135 RCW. The limit calculated by the ELC at its November 2005 meeting included the $250 million increase. The State argues that "[t]his direct and explicit amendment to the statute defines the general fund spending limit for fiscal year 2006" and thereby defeats WSFB's claim. State's Opening Br. at 25. We agree.

We find no barrier to the legislature enacting the 2006 amendment and revising former RCW 43.135.025(6) as it did. "[T]he legislature's power to enact a statute is unrestrained except where, either expressly or by fair inference, it is prohibited by the state and federal constitutions." *State ex rel. Citizens v. Murphy*, 151 Wn.2d 226, 248, 88 P.3d 375 (2004); *accord State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 809, 982 P.2d 611 (1999); *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 180, 492 P.2d 1012 (1972); *State v. Fair*, 35 Wash. 127, 133, 76 P. 731 (1904). "'Insofar as legislative power is not limited by the constitution it is unrestrained.'" *Cedar County Comm. v. Munro*, 134 Wn.2d 377, 386, 950 P.2d 446 (1998) (quoting *Moses Lake Sch. Dist. No. 161 v. Big Bend Cmty. Coll.*, 81 Wn.2d 551, 555, 503 P.2d 86 (1972)).

Each duly elected legislature is fully vested with this plenary legislative power. "'A legislative assembly, when established, becomes vested with all the powers and privileges which are necessary and incidental to a free and unobstructed exercise of its appropriate functions.'" *State ex rel. Robinson v. Fluent*, 30 Wn.2d 194, 203-04, 191 P.2d 241 (1948) (quoting *Ex parte McCarthy*, 29 Cal. 395 (1866)). "'Plenary power in the legislature, for all purposes of civil government, is the rule. A prohibition to exercise a particular power is an exception.'" *Fair*, 35

Wash. at 132-33 (quoting *People ex rel. Wood v. Draper*, 15 N.Y. 532, 543 (1857)).

Implicit in the plenary power of each legislature is the principle that one legislature cannot enact a statute that prevents a future legislature from exercising its law-making power. As this court has recognized, there is "a general rule that one legislature cannot abridge the power of a succeeding legislature, and succeeding legislatures may repeal or modify acts of a former legislature."[23] *Gruen v. State Tax Comm'n*, 35 Wn.2d 1, 54, 211 P.2d 651 (1949), *overruled on other grounds by State ex rel. Wash. State Fin. Comm. v. Martin*, 62 Wn.2d 645, 384 P.2d 833 (1963). "[A]bsent contractual protection or some other form of constitutional restriction, nothing prevents one legislature from amending the work of a previous legislature." Kristen L. Fraser, *Method, Procedure, Means, and Manner: Washington's Law of Law-Making*, 39 Gonz. L. Rev. 447, 478 (2003-2004) (footnotes omitted).

The state expenditure limit is a creature of statute, as are the laws that govern its calculation. The legislature is free to amend the expenditure limit and the process by which it is calculated. The legislature exercised this prerogative when it

[23]The *Gruen* court noted that "exceptions appear in those cases in which the legislative act is equivalent to a contract." 35 Wn.2d at 54. This exception does not apply here.

enacted the 2006 amendment. When the legislature enacts laws, it speaks as the chosen representative of the people. *Clark v. Dwyer*, 56 Wn.2d 425, 353 P.2d 941 (1960). It is neither our prerogative nor our function to substitute our judgment for the duly elected legislature's determination that the 2006 amendment was in the best interests of Washington State. Therefore, we are compelled to give the 2006 amendment its intended effect.

It is immaterial that former RCW 43.135.025(6), the target of the 2006 amendment, has its origins in an initiative. "[A]n initiative measure . . . is as much a legislative act as is [a statute]." *Love v. King County*, 181 Wash. 462, 469, 44 P.2d 175 (1935). When the people exercise their initiative power, they "exercise the same power of sovereignty as the Legislature does when enacting a statute." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 204, 11 P.3d 762, 27 P.3d 608 (2000). The people cannot, by initiative, prevent future legislatures from exercising their law-making power.[24] A law passed by initiative is as subject to the legislative power of future legislatures as is any other statute. Thus, the fact that former RCW 43.135.025(6) originated as an initiative does not impede the legislature's ability to amend that statute.

[24]The Washington Constitution imposes a constitutional limitation on the power of future legislatures with respect to laws passed by initiative. *See supra* note 6.

Nor is the 2006 amendment invalid because it operates retroactively. "Unquestionably, the Legislature has the power to enact a retrospective[25] statute, unless the statute contravenes some constitutional inhibition." *Lawson v. State*, 107 Wn.2d 444, 454, 730 P.2d 1308 (1986). Barring a constitutional limitation, an amendment may operate retroactively if "'the legislature so intended'" or "'it is "curative."'" *McGee Guest Home, Inc. v. Dep't of Soc. & Health Servs.*, 142 Wn.2d 316, 324-25, 12 P.3d 144 (2000) (quoting *State v. Cruz*, 139 Wn.2d 186, 191, 985 P.2d 384 (1999), *superseded by statute on other grounds as stated in State v. Pillatos*, 159 Wn.2d 459, 150 P.3d 1130 (2007)).

It is undisputed that the legislature intended the 2006 amendment to operate retroactively. This intent is implicit in the language and timing of the 2006 amendment. The 2006 amendment directs the process for calculating the expenditure limit for fiscal year 2006 through an enactment that took effect in March 2006, nine months after the start of that fiscal year on July 1, 2005.

[25] "'The terms "retroactive" and "retrospective" are synonymous in judicial usage.'" *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 n.23, 114 S. Ct. 1483, 128 L. Ed. 2d 229 (1994) (quoting 2 Norman J. Singer, Sutherland on Statutory Construction § 41.01, at 337 (5th rev. ed. 1993)).

The 2006 amendment is also curative in nature. An amendment that "'clarifies or technically corrects an ambiguous statute'" is curative. *McGee Guest Home*, 142 Wn.2d at 325 (quoting *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 461, 832 P.2d 1303 (1992)). "The Legislature's intent to clarify a statute is manifested by its adoption of the amendment 'soon after controversies arose as to the interpretation of the original act.'" *McGee Guest Home*, 142 Wn.2d at 325 (internal quotation marks omitted) (quoting *Johnson v. Cont'l W., Inc.*, 99 Wn.2d 555, 559, 663 P.2d 482 (1983)). The legislature enacted the 2006 amendment within months of WSFB initiating this action, and the 2006 amendment clarifies the meaning of former RCW 43.135.025(6) with respect to the fiscal year 2006 expenditure limit, the subject of that action.

Applying the 2006 amendment retroactively is not prescribed by separation of powers principles. "[T]he legislature is precluded by the constitutional doctrine of separation of powers from making *judicial* determinations." *City of Tacoma v. O'Brien*, 85 Wn.2d 266, 271, 534 P.2d 114 (1975). "[S]eparation of powers problems are raised when a subsequent legislative enactment is viewed as a clarification and applied retroactively, if the subsequent enactment contravenes the construction placed on the original statute by this court." *Overton v. Econ.*

Assistance Auth., 96 Wn.2d 552, 558, 637 P.2d 652 (1981) (citing *Johnson v. Morris*, 87 Wn.2d 922, 557 P.2d 1299 (1976)). The 2006 amendment does not contradict a construction placed on former RCW 43.135.025 by any court. When the legislature enacted the 2006 amendment, not even the trial court had announced its construction of former RCW 43.135.025.

Nor is the legislature prohibited from "pass[ing] a law that directly impacts a case pending in Washington courts." *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 625, 90 P.3d 659 (2004). "Litigation often brings to light latent ambiguities or unanswered questions that might not otherwise be apparent." *United States v. Morton,* 467 U.S. 822, 835 n.21, 104 S. Ct. 2769, 81 L. Ed. 2d 680 (1984). The legislature violates separation of powers principles by prescribing new rules to be applied to pending litigation only when doing so infringes on a judicial function by "'imped[ing] upon the court's right and duty to apply new law to the facts of this case,'" "'dictat[ing] how the court should decide a factual issue,'" or "'affect[ing] a final judgment.'" *Pollution Control Hearings Bd.*, 151 Wn.2d at 626 (quoting *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 143-44, 744 P.2d 1032, 750 P.2d 254 (1987)). A statutory amendment that is "a 'facially neutral law for the court to apply to the facts before it,' [does] not violate the separation of

powers." *Id.* (quoting *Haberman*, 109 Wn.2d at 144).

WSFB's contention that the retroactivity of the 2006 amendment violates due process is without merit. The legislature may not give an amendment retroactive effect "where the effect would be to interfere with vested rights." *Lawson*, 107 Wn.2d at 454-55. But WSFB provides neither argument nor authority to support its novel theory that the citizens of Washington have a *vested right* to vote on taxes that are expected to raise general fund revenues in excess of the expenditure limit. This court has stated:

> "[a] vested right, entitled to protection from legislation, must be something more than a *mere expectation* based upon an anticipated continuance of the existing law; *it must have become a title,* legal or equitable, *to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another*."

Id. at 455 (alteration in original) (internal quotation marks omitted) (quoting *In re Marriage of MacDonald*, 104 Wn.2d 745, 750, 709 P.2d 1196 (1985)). "No one has a vested right in any general rule of law or policy of legislation which gives an entitlement to insist that it remain unchanged for one's own benefit." *Johnson*, 99 Wn.2d at 563. Washington voters' statutory "right" to approve taxes that raise revenues in excess of the state expenditure limit is a mere expectation--it is not a vested right entitled to due process protections from subsequently enacted legislation.

WSFB also argues that the 2006 amendment is inoperative because it violates article II, section 37 of the Washington Constitution. "Article II, section 37 requires legislation which revises or amends other acts to *set them forth at full length*; legislation which fails to do this will be held invalid."[26] *Wash. Ass'n of Neighborhood Stores v. State*, 149 Wn.2d 359, 373, 70 P.3d 920 (2003) (emphasis added). WSFB contends that the 2006 amendment violates this requirement because it does not amend former RCW 43.135.025(5), which establishes the ELC and grants it authority to determine the state expenditure limit. But the 2006 amendment sets forth the statute it amends, former RCW 43.135.025, in full, including section 5. *See* Laws of 2006, ch. 56, § 7. The constitutional requirements of article II, section 37 are satisfied.

Also citing former RCW 43.135.025(5), WSFB argues that the 2006 amendment is invalid in light of the ELC's exclusive power to determine the state expenditure limit. That is a very strong reading of former RCW 43.135.025(5), which does not restrict the legislature's own power to make decisions regarding the expenditure limit.[27] However, assuming without deciding that WSFB's proposed

[26]Article II, section 37 provides that "[n]o act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length."

[27]Former RCW 43.135.025 provides:

> (5) A state expenditure limit committee is established for the purpose of determining and adjusting the state expenditure limit as provided in this chapter.

construction is correct, the 2006 amendment nonetheless remains valid. The 2006 amendment does not contravene the ELC's authority--to the contrary, it adopts as the expenditure limit for fiscal year 2006 the limit established by the ELC at its November 2005 meeting.

Finally, WSFB argues that in order for the voter approval requirement of former RCW 43.135.035(2)(a) to have any meaning, the challenged taxes must be measured against an estimated limit projected by the ELC in November 2004, because only that calculation was available prior to the enactment of the taxes. Giving effect to the 2006 amendment, WSFB further contends, will thwart the TPA's purpose to provide for voter approval of tax increases. This argument takes us full circle to the foundational principles on which this analysis is grounded. The legislature has plenary power to enact, amend, or repeal a statute, except as restrained by the state and federal constitutions. *See*, *e.g.*, *Murphy*, 151 Wn.2d at 248. The state expenditure limit and the TPA are creatures of statute, which the legislature is free to amend. When it enacted the 2006 amendment, the legislature,

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> The members of the state expenditure limit committee are the director of financial management, the attorney general or the attorney general's designee, and the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. All actions of the state expenditure limit committee taken pursuant to this chapter require an affirmative vote of at least three members.

speaking as the elected representative of the people, exercised this prerogative. Because it is not our function to substitute our judgment for that of the legislature in enacting the 2006 amendment, we give the 2006 amendment its intended effect.

"'Principles of judicial restraint dictate that if resolution of an issue effectively disposes of a case, we should resolve the case on that basis without reaching any other issues that might be presented.'" *Hayden v. Mut. of Enumclaw Ins. Co.*, 141 Wn.2d 55, 68, 1 P.3d 1167 (2000) (internal quotation marks omitted) (quoting *State v. Peterson*, 133 Wn.2d 885, 894, 948 P.2d 381 (1997) (Talmadge, J., concurring)). We therefore decline to reach the other issues raised in this case, including (1) the validity of other legislative actions affecting the fiscal year 2006 expenditure limit and that of the ELC's actions at its November 2005 meeting, (2) the constitutionality of the former RCW 43.135.035(2)(a) voter approval requirement, and (3) the legislative and executive privileges issue.

IV. CONCLUSION

We find no basis on which to invalidate the 2006 amendment. The 2006 amendment is a valid exercise of the legislature's plenary power to enact laws, a power that encompasses amending former RCW 43.135.025(6) as the legislature sees fit. While the 2006 amendment operates retroactively, it does so within the

limitations placed on retroactive statutes and without raising a separation of powers issue. WSFB's other proposed justifications for invalidating the 2006 amendment do not find adequate support in the law. It is neither the prerogative nor the function of this court to substitute our judgment for that of the legislature in enacting laws unless those laws clearly contravene state or federal constitutional provisions. Therefore, we hold that the 2006 amendment establishes the fiscal 2006 expenditure limit. Because the taxes enacted in ESHB 2314 Parts I and II do not generate general fund revenues in excess of the fiscal year 2006 expenditure limit thus established, WSFB's challenge fails. We therefore reverse that portion of the trial court's order ruling to the contrary and remand for entry of summary judgment in favor of the State.

AUTHOR:
Justice Mary E. Fairhurst

WE CONCUR:

Justice Charles W. Johnson

Justice Susan Owens

Justice Barbara A. Madsen

Justice Bobbe J. Bridge